

# H. R. 3

## IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1977

Mr. ROSTENKOWSKI (for himself and Mr. ROGERS) introduced the following bill: which was referred jointly to the Committees on Ways and Means and Interstate and Foreign Commerce

## A BILL

To strengthen the capability of the Government to detect, prosecute, and punish fraudulent activities under the medicare and medicaid programs, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That this Act may be cited as the "Medicare-Medicaid Anti-  
4 Fraud and Abuse Amendments".

Bill cited as "Medicare  
-Medicaid Anti-Fraud  
and Abuse Amendments"

- 5 PROHIBITION AGAINST ASSIGNMENT BY PHYSICIANS AND  
6 OTHERS OF CLAIMS FOR SERVICES

- 7 SEC. 2. (a) Section 1842 (b) (5) of the Social Security  
8 Act is amended by adding at the end thereof the following  
9 new sentence: "No payment which under the preceding  
10 sentence may be made directly to the physician or other

Amends Title XVIII  
administration-by-  
carriers to prohibit  
payment under reassign-  
ment or power of attor-  
ney to anyone other  
than provider or

assigned employer or facility.

Allows assignment by individual who received service; reassignment to governmental agency or entity or under court order; payment to agent of provider if under agency agreement and if agent's compensation is unrelated to amount of provider's payments or billings and is not dependent upon their collection.

Amends Title XVIII to prohibit payment under assignment or power of attorney to anyone other than provider except to a governmental agency or entity

- 1 person providing the service involved (pursuant to an assign-  
2 ment described in subparagraph (B) (ii) of paragraph (3) )  
3 shall be made to anyone else under a reassignment or power  
4 of attorney (except to an employer or facility as described  
5 in clause (A) or (B) of such sentence) ; but nothing in  
6 this subsection shall be construed (i) to prevent the making  
7 of such a payment in accordance with an assignment from  
8 the individual to whom the service was provided or a reas-  
9 signment from the physician or other person providing such  
10 service if such assignment or reassignment is made to a gov-  
11 ernmental agency or entity or is established by or pursuant  
12 to the order of a court of competent jurisdiction, or (ii) to  
13 preclude an agent of the physician or other person provid-  
14 ing the service from receiving any such payment if (but  
15 only if) such agent does so pursuant to an agency agree-  
16 ment under which the compensation to be paid to the agent  
17 for his services for or in connection with the billing or  
18 collection of payments due such physician or other person  
19 under this title is unrelated (directly or indirectly) to the  
20 amount of such payments or the billings therefor, and is not  
21 dependent upon the actual collection of any such payment.".
- 22 (b) Section 1815 of such Act is amended by adding  
23 at the end thereof the following new subsection:
- 24 "(c) No payment which may be made to a provider  
25 of services under this title for any service furnished to an

1 individual shall be made to any other person under an  
 2 assignment or power of attorney; but nothing in this sub-  
 3 section shall be construed (1) to prevent the making of  
 4 such a payment in accordance with an assignment from  
 5 the provider if such assignment is made to a governmental  
 6 agency or entity or is established by or pursuant to the order  
 7 of a court of competent jurisdiction, or (2) to preclude an  
 8 agent of the provider of services from receiving any such  
 9 payment if (but only if) such agent does so pursuant to an  
 10 agency agreement under which the compensation to be paid  
 11 to the agent for his services for or in connection with the  
 12 billing or collection of payments due such provider under  
 13 this title is unrelated (directly or indirectly) to the amount  
 14 of such payments or the billings therefor, and is not depend-  
 15 ent upon the actual collection of any such payment."

16 (c) Section 1902 (a) (32) of such Act is amended to  
 17 read as follows:

18 "(32) provide that no payment under the plan for  
 19 any care or service provided to an individual shall be  
 20 made to anyone other than such individual or the person  
 21 or institution providing such care or service, under an  
 22 assignment or power of attorney or otherwise; except  
 23 that--

24 "(A) in the case of any care or service pro-  
 25 vided by a physician, dentist, or other individual

or under court order or  
 to provider's agent if  
 under agency agreement  
 and if agent's compen-  
 sation is unrelated to  
 amount of provider's  
 payment or billings and  
 is not dependent on  
 their collection.

Amends Title XIX:  
 A State Plan must pro-  
 vide that no payment be  
 made under assignment  
 or power of attorney  
 except

to an employer of the  
 provider,

1 practitioner, such payment may be made (i) to the  
 2 employer of such physician, dentist, or other prac-  
 3 titioner if such physician, dentist, or practitioner is  
 4 required as a condition of his employment to turn  
 5 over his fee for such care or service to his employer,  
 6 or (ii) (where the care or service was provided in a  
 7 hospital, clinic, or other facility) to the facility in  
 8 which the care or service was provided if there is a  
 9 contractual arrangement between such physician,  
 10 dentist, or practitioner and such facility under which  
 11 such facility submits the bill for such care or service;  
 12 and

to a facility holding  
 a contract with the  
 provider,

13 “(B) nothing in this paragraph shall be con-  
 14 strued (i) to prevent the making of such a payment  
 15 in accordance with an assignment from the person  
 16 or institution providing the care or service involved  
 17 if such assignment is made to a governmental  
 18 agency or entity or is established by or pursuant  
 19 to the order of a court of competent jurisdiction,  
 20 or (ii) to preclude an agent of such person or  
 21 institution from receiving any such payment if  
 22 (but only if) such agent does so pursuant to an  
 23 agency agreement under which the compensation to  
 24 be paid to the agent for his services for or in con-  
 25 nection with the billing or collection of payments

to a governmental  
 agency or entity,  
 under a court order  
 or

to an agent of the  
 provider not dependent  
 on the collection of  
 payments due the pro-  
 vider.

due such person or institution under the plan is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment;".

(d) The amendments made by this section shall apply with respect to care and services furnished on or after the date of the enactment of this Act.

Applicable to services furnished on or after date of enactment of Act.

#### DISCLOSURE OF OWNERSHIP AND FINANCIAL INFORMATION

SEC. 3. (a) Part A of title XI of the Social Security Act is amended by inserting immediately after section 1123 the following new section:

#### "DISCLOSURE OF OWNERSHIP AND FINANCIAL INFORMATION"

New Section in Title XI  
"Disclosure of Ownership and Financial Information"

"SEC. 1124. (a) (1) The Secretary shall by regulation (or by contract provision) provide that any entity (other than a public agency) which is—

"(A) a provider or supplier (as those terms are defined in subsection (c)) that furnishes, or arranges for the furnishing of, items or services with respect to which payment is claimed under title XVIII, under any program established pursuant to title V, or under a State plan approved under title XIX, or

Any provider or supplier paid under Titles XVIII, V or XIX (excluding individual physicians) or

"(B) (i) a party to an agreement with the Secretary entered into pursuant to section 1816 or 1842 (a),

any fiscal agent

or (ii) a party to an agreement, with a State agency administering or supervising the administration of a State plan approved under title XIX, under which such party serves as a fiscal agent for the State in the operation of such plan,

shall promptly comply with any request, specifically addressed to that entity by the Secretary or the Comptroller General of the United States, for any or all of the following:

"(C) full and complete information as to the identity (i) of every person who has (directly or indirectly) an ownership interest or lease or rental interest of 5 per centum or more in such entity and the nature and extent thereof, or who is the owner (in whole or in part) of an interest of 5 per centum or more in any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by such entity or any of the property or assets thereof, (ii) in case such entity is organized as a corporation, of each officer and director of the corporation, and (iii) in case such entity is organized as a partnership, of each partner;

"(D) full and complete information (except in the case of a supplier not affiliated through direct or indirect common ownership or control, in whole or in part, with a provider) as to any significant business transactions between such entity (and, in the case of a

shall comply with a request from the Secretary or Comptroller General for

--disclosure of identity of individuals, officers and directors of corporations and partners having an interest of 5% or more in the entity

--disclosure of relationships between any persons mentioned above and any significant business transactions with the entity

shared health facility, between any supplier affiliated therewith) and persons referred to in subparagraph (C);

“(E) a report containing such information with respect to the entity’s costs and charges involving items and services described in subparagraph (A) (or its functions described in subparagraph (B)) as the Secretary may specify (except in the case of a supplier not affiliated through direct or indirect common ownership or control, in whole or in part, with a provider), including costs and charges of related organizations (as that term is employed for purposes of title XVIII); and

“(F) in the case of an entity described in subparagraph (A) which is an independent pharmacy, independent laboratory, independent supplier of durable medical equipment, or renal disease facility, reasonable access to the books and records of such entity which pertain to the provision of or billing and payment for goods and services supplied or rendered by such entity in connection with the programs established under titles V, XVIII, and XIX.

“(2) Notwithstanding the preceding provisions of this subsection, no request under paragraph (1) shall apply to transactions occurring, costs incurred, or charges imposed more than three years prior to the date on which the request

--a report on the entity's costs and charges for items and services under Titles XVIII, V or XIX, including costs and charges of related organizations

--access to books and records of pharmacies, laboratories, medical equipment suppliers and renal disease facilities pertaining to Title XVIII, V or XIX services.

Requests must be made within three years of transaction.

1 is made; and no request under paragraph (1) shall be made  
 2 of an entity described in subparagraph (A) thereof if such  
 3 entity does not furnish a significant volume (as defined in  
 4 regulations prescribed by the Secretary) of items and serv-  
 5 ices referred to in such subparagraph.

Exemption of entities  
 not furnishing a sig-  
 nificant volume of  
 Title XVIII, V or  
 XIX services.

6 "(b) (1) If at the close of the sixty-day period begin-  
 7 ning on the date a request under subsection (a) (1) is made  
 8 of an entity described in subparagraph (A) or (B) thereof  
 9 such request has not been complied with, then—

A request must be  
 answered within 60  
 days or

10 "(A) in case such entity is an entity described in  
 11 subsection (a) (1) (A), the Secretary may notify such  
 12 entity that no payment will be made to such entity  
 13 under title XVIII, and no Federal funds will be avail-  
 14 able with respect to any expenditures made under or  
 15 pursuant to title V or XIX (or a program or plan ap-  
 16 proved thereunder) for or on account of any services  
 17 furnished by such entity, on or after the first day of the  
 18 first calendar month which begins not less than thirty  
 19 days after the date such notice is sent,

--the Secretary may  
 withhold payments  
 under XVIII and with-  
 hold Federal matching  
 funds under V or XIX

20 "(B) in case such entity is an entity described in  
 21 subsection (a) (1) (B) (i), the Secretary may notify  
 22 such entity that any agreement between such entity and  
 23 the Secretary entered into pursuant to section 1816 or  
 24 section 1842 is terminated effective on the first day of

--the Secretary may  
 terminate the fiscal  
 agent's agreement  
 under XVIII



1 the first calendar month which begins not less than  
2 thirty days after the date such notice is sent, and

3 “(C) in case such entity is an entity described in  
4 subsection (a) (1) (B) (ii), the Secretary may notify  
5 the State having an agreement with such entity that  
6 no Federal funds will be available with respect to any  
7 expenses incurred to compensate such entity for or on  
8 account of services performed by it pursuant to such  
9 agreement (or any similar agreement) on or after the  
10 first day of the first calendar month which begins not  
11 less than thirty days after the date such notice is sent.

12 In case the Comptroller General of the United States makes  
13 a request under subsection (a) (1) which is not complied  
14 with prior to the close of the sixty-day period described in  
15 the preceding sentence, then he shall, at the earliest practi-  
16 cable date after the close of such period, advise the Secre-  
17 tary of the fact that such request was made by him and  
18 was not complied with within such period, so that the  
19 Secretary may notify the entity involved as provided in  
20 subparagraph (A), (B), or (C).

21 “(2) Notwithstanding any other provision of law—

22 “(A) payments otherwise authorized to be made  
23 under title XVIII, and Federal funds otherwise avail-  
24 able with respect to expenditures under or pursuant to

—the Sec. may with-  
hold Federal funds  
from the State for  
reimbursement of the  
fiscal agent under XIX

If Comptroller  
General's request is  
unanswered after 60  
days, s/he shall noti-  
fy the Sec., who will  
take appropriate  
action.

The Sec.'s notice of  
payment withholding  
shall supercede other-  
wise authorized pay-  
ments under XVIII, V  
or XIX, and

title V or XIX (or a program or plan approved thereunder), shall be subject to the limitations referred to in notices sent by the Secretary pursuant to paragraph (1) (A), and the entities involved shall not be qualified (on or after the effective date of such limitations) as providers or suppliers for purposes of the provisions or programs involved,

the entities involved shall no longer be qualified as providers or suppliers for the programs involved,

"(B) agreements referred to in paragraph (1) (B) shall be terminated as indicated by the Secretary in notices sent by him pursuant to such paragraph, and

Federal agreements with fiscal agents under Title XVIII and XIX shall be terminated with the Secretary's notice,

"(C) Federal funds otherwise available with respect to expenditures under a State plan approved under title XIX shall be subject to the limitations referred to in notices sent by the Secretary pursuant to paragraph (1) (C);

Federal funds otherwise available under XIX withheld on the Sec.'s notice.

except that the Secretary, for good cause shown, may terminate the application of any such limitation.

Secretary may rescind such limitations.

"(3) Determinations and notifications by the Secretary under the preceding provisions of this subsection shall be made subject to the requirements and procedures for hearing and judicial review which are generally applicable for purposes of the provisions or programs involved; except that in no case shall payments be made or Federal funds continue available under or for purposes of such provisions or programs in a case to which paragraph (1) (A) applies, pend-

Provision for hearing and judicial review. Payments may not be made for more than 90 days after notice of withholding is sent pending hearing or review.

ing any such hearing or review, for a period of more than ninety days after the date on which the notice described in such paragraph is sent.

"(c) For purposes of this section—

"(1) the term 'provider' means a provider of services as defined in section 1861 (n); and

Definition of  
"provider" and  
"supplier." (Excludes  
individual physicians)

"(2) the term 'supplier' means an individual, organization, or entity (other than an individual practitioner or a provider as defined in paragraph (1)) engaged in furnishing (or in arranging for the furnishing of) any kind of items or services with respect to which payment may be made under title XVIII, under a program established pursuant to title V, or under a State plan approved under title XIX (including a shared health facility as defined in section 1125 and any practitioner or supplier affiliated with such a facility, and including a health maintenance organization as defined in section 1301 of the Public Health Service Act):

In any case where an entity is (without regard to this sentence) a 'provider' or 'supplier' within the meaning of the applicable term as defined in paragraph (1) or (2), such term also includes any subcontractor or other person (whether or not otherwise a provider or supplier as so defined) with which such entity engages in business transactions if such subcontractor or other person is affiliated through

"Provider" and  
"Supplier" includes  
any subcontractor or  
other business trans-  
actor directly or  
indirectly owned or  
controlled by such  
entity.

1 direct or indirect common ownership or control, in whole or  
2 in part, with such entity.”.

3 (b) Part A of title XI of such Act is amended by  
4 inserting after section 1124 (as added by subsection (a)  
5 of this section) the following new section:

6 “SHARED HEALTH FACILITY

7 “SEC. 1125. For purposes of this Act, the term ‘shared  
8 health facility’ means any arrangement whereby—

New Section in  
Title XI  
“Shared Health  
Facility”

Definition of “shared  
health facility”

9 “(1) two or more health care practitioners (one  
10 or more of whom receives payment on a fee-for-service  
11 basis under title V, XVIII, or XIX of this Act) prac-  
12 tice their professions at a common physical location;

13 “(2) such practitioners share (A) common wait-  
14 ing areas, examining rooms, treatment rooms, or other  
15 space, (B) the services of supporting staff, or (C)  
16 equipment, and

17 “(3) (A) such practitioners have a person who is  
18 in charge of, controls, manages, or supervises substantial  
19 aspects of the arrangement or operation for the delivery  
20 of health or medical services at such common physical  
21 location, other than the direct furnishing of profes-  
22 sional health care services by the practitioners to their  
23 patients, or a person who makes available to such prac-  
24 titioners the services of supporting staff who are not  
25 employees of such practitioners, and either such person

is compensated in whole or in part, for the use of such physical location or support services pertaining thereto, on a basis related to amounts charged or collected for the services rendered or ordered at such location, or

"(B) at least one of such practitioners received payments on a fee-for-service basis under titles V, XVIII, and XIX of this Act in excess of \$5,000 for any one month during the preceding 12 months, or in an aggregate amount exceeding \$40,000 during the preceding 12 months;

except that such term does not include a provider of services (as defined in section 1861 (u) of this Act), a health maintenance organization (as defined in section 1301 of the Public Health Service Act), a hospital cooperative shared services organization meeting the requirements of section 501 (c) of the Internal Revenue Code of 1954, or any public entity."

#### PENALTIES FOR DEFRAUDING MEDICARE AND MEDICAID

##### PROGRAMS

SEC. 4. (a) Section 1877 of the Social Security Act is amended—

(1) in subsection (a) thereof, by striking out "shall be guilty" and all that follows and inserting in lieu thereof the following: "shall (i) in the case of such a statement, representation, concealment, failure, or conversion by any person in connection with the fur-

Penalties for Defrauding Medicare and Medicaid Programs

Amends §1877 (Medicare penalties):

Makes fraud by providers a felony, raises fine to a maximum of \$25,000 and increases imprisonment to a maximum of 5 years

nishing (by that person) of items or services for which payment is or may be made under this title, be guilty of a felony and upon conviction thereof fined not more than \$25,000 or imprisoned for not more than five years or both, or (ii) in the case of such a statement, representation, concealment, failure, or conversion by any other person, be guilty of a misdemeanor and upon conviction thereof fined not more than \$10,000 or imprisoned for not more than one year or both.”;

(2) in subsection (b) thereof—

(A) by inserting “or arranges for the furnishing of” immediately after “Whoever furnishes”;

(B) by inserting “(in cash or in kind)” immediately after “kickback or bribe”;

(C) by inserting “or arrangement for the furnishing” immediately after “in connection with the furnishing”;

(D) by striking out “rebate of any fee or charge” and inserting in lieu thereof “rebate of any fee, charge, or portion of any payment, in cash or in kind”;

(E) by inserting “or arrangement for the furnishing” immediately after “another person for the furnishing”;

Leaves fraud by recipients a misdemeanor, fine at a maximum of \$10,000 and imprisonment at a maximum of one year.

Extends liability to accomplices

Specifies “in cash or in kind” kickbacks and bribes

Makes rebate definition more specific

- 1 (F) by striking out "misdemeanor" and insert- Makes kickbacks, bribes  
2 ing in lieu thereof "felony"; and rebates a felony
- 3 (G) by striking out "\$10,000" and inserting in --raising fine to a  
4 lieu thereof "\$25,000"; and maximum of \$25,000
- 5 (II) by striking out "one year" and inserting --increasing imprison-  
6 in lieu thereof "five year"; and ment to a maximum of  
7 (3) in subsection (c) thereof— 5 years
- 8 (A) by striking out "misdemeanor" and in- Makes misrepresentation  
9 serting in lieu thereof "felony"; of facility qualifica-  
10 (B) by striking out "\$2,000" and inserting in tions for certification  
11 lieu thereof "\$25,000"; and a felony  
12 (C) by striking out "6 months" and inserting --raising fine to a  
13 in lieu thereof "five years". maximum of \$25,000
- 14 (3) Section 1909 of such Act is amended— --increasing imprison-  
15 (1) in subsection (a) thereof, by striking out ment to a maximum of  
16 "shall be guilty" and all that follows and inserting in 5 years
- 17 lieu thereof the following: "shall (i) in the case of such Amends E1909 (Medicaid  
18 a statement, representation, concealment, failure, or penalties):  
19 conversion by any person in connection with the furnish- Makes fraud by providers  
20 ing (by that person) of items or services for which a felony, raises fine  
21 payment is or may be made under this title, be guilty of to a maximum of \$25,000  
22 a felony and upon conviction thereof fined not more and increases imprison-  
23 than \$25,000 or imprisoned for not more than five years ment to a maximum of  
24 or both, or (ii) in the case of such a statement, repre- 5 years.

1     sentation, concealment, failure, or conversion by any  
 2     other person, be guilty of a misdemeanor and upon con-  
 3     viction thereof fined not more than \$10,000 or im-  
 4     prisoned for not more than one year or both. In addition,  
 5     in any case where an individual who is otherwise eligible  
 6     for assistance under a State plan approved under this  
 7     title is convicted of an offense under the preceding pro-  
 8     visions of this subsection, the State may at its option  
 9     (notwithstanding any other provision of this title or of  
 10    such plan) limit, restrict, or suspend the eligibility of  
 11    that individual for such period (not exceeding one year)  
 12    as it deems appropriate; but the imposition of a limita-  
 13    tion, restriction, or suspension with respect to the eligi-  
 14    bility of any individual under this sentence shall not  
 15    affect the eligibility of any other person for assistance  
 16    under the plan, regardless of the relationship between  
 17    that individual and such other person.”;

18       (2) in subsection (b) thereof—

19           (A) by inserting “or arranges for the furnish-  
 20       ing of” immediately after “Whoever furnishes”;

21           (B) by inserting “(in cash or in kind)” imme-  
 22       diately after “kickback or bribe”;

23           (C) by inserting “or arrangement for the fur-

Leaves fraud by reci-  
 pients a misdemeanor,  
 fine at up to \$10,000  
 and imprisonment at  
 not more than one year.  
 Additionally, the State  
 may limit, restrict or  
 suspend a convicted  
 recipient's eligibility  
 for up to one year, but  
 this imposition shall  
 not affect the eligi-  
 bility of any other  
 person, regardless of  
 relationship.

Extends criminal lia-  
 bility to accomplices

Specifies “in cash or  
 in kind” kickbacks and  
 bribes



1       nishing" immediately after "in connection with the  
2       furnishing";

3       (D) by striking out "rebate of any fee or  
4       charge" and inserting in lieu thereof "rebate of any  
5       fee, charge, or portion of any payment, in cash or  
6       in kind,";

Makes rebate definition  
more specific

7       (E) by inserting "or arrangement for the fur-  
8       nishing" immediately after "another person for the  
9       furnishing";

10       (F) by striking out "misdemeanor" and insert-  
11       ing in lieu thereof "felony"; and

Makes kickbacks, bribes  
and rebates a felony

12       (G) by striking out "\$10,000" and inserting  
13       in lieu thereof "\$25,000"; and

—raising fine to up to  
\$25,000

14       (H) by striking out "one year" and inserting  
15       in lieu thereof "five years"; and

—increasing imprison-  
ment to a maximum of  
5 years

16       (3) in subsection (c) thereof—

17       (A) by striking out "misdemeanor" and in-  
18       serting in lieu thereof "felony",

Makes misrepresentation  
of facility qualifica-  
tions for certification  
a felony

19       (B) by striking out "\$2,000" and inserting in  
20       lieu thereof "\$25,000", and

—raising fine to up to  
\$25,000

21       (C) by striking out "6 months" and inserting  
22       in lieu thereof "five years".

—increasing imprison-  
ment to a maximum of  
5 years

23       (c) The amendments made by this section shall apply

Applicable only to

1 only to offenses committed after the date of the enactment  
2 of this Act.

offenses committed after  
date of enactment.

3 AMENDMENTS RELATED TO PROFESSIONAL STANDARDS

PSRO Amendments

4 REVIEW ORGANIZATIONS

5 SEC. 5. (a) Section 1152 (c) of the Social Security Act  
6 is amended to read as follows:

7 " (c) Where the Secretary finds a Professional Stand-  
8 ards Review Organization (whether designated on a condi-  
9 tional basis or otherwise) to be competent to perform review  
10 responsibilities, the review, certification, and similar activi-  
11 ties otherwise required pursuant to provisions of this Act  
12 (other than this part) shall not be applicable with respect  
13 to those providers, suppliers, and practitioners being re-  
14 viewed by such Professional Standards Review Organization,  
15 except to the extent specified by the Secretary. Nothing in  
16 the preceding sentence shall be construed as rendering in-  
17 applicable any provision of this Act wherein requirements  
18 with respect to conditions for eligibility to or payment of  
19 benefits (as distinct from reviews and certifications made  
20 with respect to determinations of the kind made pursuant  
21 to paragraphs (1) and (2) of section 1155 (a) ) must be  
22 satisfied."

When the Secretary  
finds a PSRO competent,  
all other duplicative  
review requirements  
under other provisions  
of law terminate.

23 (b) (1) Section 1154 (b) of such Act is amended to  
24 read as follows:

25 " (b) During any such trial period (which may not

1 exceed twenty-four months except as provided in subsection  
 2 (c)), the Secretary may require a Professional Standards  
 3 Review Organization to perform, in addition to review of  
 4 health care services provided by or in hospitals, only such  
 5 of the duties and functions required under this part as he  
 6 determines such organization to be capable of performing.  
 7 The number and type of such duties shall, during the trial  
 8 period, be progressively increased as the organization be-  
 9 comes capable of added responsibility so that, by the end  
 10 of such period, such organization shall be considered a quali-  
 11 fied organization if the Secretary finds—

12 “(1) that it is substantially carrying out in a satis-  
 13 factory manner reviews of services provided by or in  
 14 hospitals (including ancillary services), and such other  
 15 duties, functions, and reviews which the Secretary has  
 16 found such organization capable of performing and re-  
 17 quired it to perform; and

18 “(2) that it has developed a plan acceptable to  
 19 the Secretary for progressively assuming over a reason-  
 20 able period of time such remaining functions as are re-  
 21 quired under section 1155 (a).

22 Any of such duties and functions not performed by such  
 23 organization shall be performed in the manner and to the  
 24 extent otherwise provided for under law.”

25 (2) Section 1154 of such Act is further amended by

Indicates that trial-  
 period PSROs' main res-  
 ponsibilities are to  
 review hospital services  
 The Secretary may add  
 other duties as PSRO  
 becomes capable of  
 handling them.

Qualification of PSRO  
 requires that it be  
 satisfactorily reviewing  
 hospital and ancillary  
 services and any other  
 which the Secretary has  
 assigned

and

it has an acceptable  
 plan to progressively  
 assume other functions  
 required of PSROs.

Any functions not per-  
 formed by PSRO must  
 still be provided for.

1 redesignating subsection (c) as subsection (d), and by in-  
2 serting after subsection (b) the following new subsection:

3 “(c) If the Secretary finds that an organization desig-  
4 nated under subsection (a) has been unable to perform  
5 satisfactorily all of the duties and functions required under  
6 this part, he may extend such organization's trial period for  
7 an additional period not exceeding twenty-four months.”.

8 (c) Section 1155(b) (3) of such Act is amended by  
9 inserting “and abstract” immediately after “examine”.

10 (d) Section 1155 of such Act is amended—

11 (1) by striking out “directly or indirectly involved  
12 in” in subsection (a) (6) (A) and inserting in lieu  
13 thereof “directly responsible for”;

14 (2) by striking out “any financial” in subsection  
15 (a) (6) (B) and inserting in lieu thereof “a significant  
16 financial”;

17 (3) by inserting after “to such organization” in  
18 subsection (f) (2) the following: “, in a manner similar  
19 to that provided for under section 1816(c),”; and

20 (4) by striking out subsection (g) and inserting  
21 in lieu thereof the following new subsection:

22 “(g) The Secretary, where a Professional Standards  
23 Review Organization (whether designated on a conditional  
24 basis or otherwise) requests review responsibility with re-  
25 spect to services furnished in shared health facilities (as de-

A PSRO's trial period  
may be extended an  
additional 24 months.

PSROs are authorized  
to abstract provider  
records.

Restricts disqualifi-  
cation of reviewing  
physicians to cases of  
patients doctor was  
directly responsible for.

Allows physicians to  
review institutions in  
which they or their  
family have some, but  
not a significant,  
financial interest.

Payment to PSROs shall  
conform to §1816(c) -  
providing for advances  
and for payment of ad-  
ministrative costs  
associated with the  
PSRO's functions agreed  
to with the Secretary.

Deletes §1156(g)  
(restricting reviews)  
and substitutes section  
requiring Secretary to  
give priority to PSRO  
requests to review  
shared health facilities

1 fined in section 1125), must give priority to such request,  
 2 with the highest priority being assigned to areas with sub-  
 3 stantial numbers of shared health facilities.”.

4 (e) Section 1158 of such Act is amended by adding  
 5 at the end thereof the following new subsection:

6 “(c) Where a Professional Standards Review Organi-  
 7 zation (whether designated on a conditional basis or other-  
 8 wise) has been found competent by the Secretary to assume  
 9 review responsibility with respect to specified types of health  
 10 care services or specified providers or practitioners of such  
 11 services and is performing such reviews, determinations made  
 12 pursuant to paragraphs (1) and (2) of section 1155 (a) in  
 13 connection with such reviews shall constitute the conclusive  
 14 determination on those issues (subject to section 1159) for  
 15 purposes of payment under this Act, and no reviews with  
 16 respect to those determinations shall be conducted, for pur-  
 17 poses of payment, by agencies and organizations which are  
 18 parties to agreements entered into by the Secretary pursuant  
 19 to section 1816, carriers which are parties to contracts en-  
 20 tered into by the Secretary pursuant to section 1842, or State  
 21 agencies administering or supervising the administration of  
 22 State plans approved under title XIX.”.

23 (f) Section 1160 (b) (1) of such Act is amended by  
 24 striking out “practitioner or provider” each time it appears  
 25 therein and inserting in lieu thereof “health care practitioners

PSRO review determina-  
 tions are conclusive  
 for Medicare and Medi-  
 caid. Fiscal agents  
 cannot conduct their  
 own reviews for purposes  
 of payment.

Expands who may be  
 excluded from parti-  
 cipation in Federal  
 health programs to  
 include health care  
 facilities.

1 or any hospital, or other health care facility, agency, or  
2 organization”.

3 (g) Section 1163 (f) of such Act is amended by striking  
4 out the last sentence and inserting in lieu thereof the follow-  
5 ing: “Such report shall also include such data, in addition to  
6 the data to be included in the report required by section 1171,  
7 as the Council may find appropriate.”.

8 (h) Section 1165 of such Act is amended—

9 (1) by inserting “(a)” immediately after “SEC.  
10 1165.”; and

11 (2) by adding at the end thereof the following new  
12 subsection:

13 “(b) The Secretary shall by regulation provide for the  
14 implementation of such data collection systems as will assure  
15 the systematic gathering of comparable data on an accurate,  
16 economical, and timely basis for the purposes of (1) evalu-  
17 ating a Professional Standards Review Organization’s impact  
18 on the quality and utilization of health care services in its  
19 area, (2) comparing such impact with the corresponding  
20 impact in other areas, and (3) evaluating the administration  
21 of the program.”.

22 (i) Section 1166 of such Act is amended—

23 (1) by striking out “or (2)” in subsection (a)  
24 and inserting in lieu thereof “, (2)”;

25 (2) by inserting the following immediately before

In its annual report  
to the Secretary and  
Congress, the National  
Professional Standards  
Review Council may  
include data in addi-  
tion to that specifi-  
cally required.

Provides for data  
collection system to  
evaluate a particular  
PSRO's impact on health  
care services in its  
area, compare it with  
other PSROs' impact and  
evaluate the program's  
administration.

the period at the end of subsection (a): “, or (3) in accordance with subsection (b)”;

(3) by redesignating subsection (b) as subsection (c); and

(4) by inserting the following new subsection immediately after subsection (a):

“(b) A professional Standards Review Organization shall provide, in accordance with procedures established by the Secretary, data and information—

“(1) to assist Federal and State agencies recognized by the Secretary as having responsibility for identifying and investigating cases or patterns of fraud or abuse, which data and information shall be provided by such Organization to such agencies at the request of such agencies or at the discretion of such Organization on the basis of its findings with respect to suspected cases or patterns of fraud or abuse;

(2) to assist the Secretary, and such Federal and State agencies recognized by the Secretary as having health planning or related responsibilities under Federal or State law (including health systems agencies and State health planning and development agencies), in carrying out appropriate health care planning and related activities, which data and information shall be provided in such format and manner as may be pre-

Authorizes PSROs to refer cases of possible fraud to appropriate State and Federal law enforcement agencies.

PSROs shall provide HEW and other health agencies with health care planning information in the form of statistical and demographic data.

scribed by the Secretary or agreed upon by the responsible Federal and State agencies and such Organization, and shall be in the form of aggregate statistical data (without identifying any individual) on a geographic, institutional, or other basis reflecting the volume and frequency of services furnished, as well as the demographic characteristics of the population subject to review by such Organization.

The penalty provided in subsection (c) shall not apply to the disclosure of any data and information received under this subsection, except that such penalty shall apply to the disclosure (by the agency receiving such data and information) of any such data and information described in paragraph (1) unless such disclosure is made in a judicial, administrative, or other formal legal proceeding resulting from an investigation conducted by the agency receiving the data and information".

(j) Section 1167 of such Act is amended by adding the following new subsection at the end thereof:

"(d) The Secretary shall make payment to a Professional Standards Review Organization, whether co-educationally designated or qualified, or to any member of employee thereof, or to any person who furnishes professional counsel or services to such organization, in an amount equal to the

The penalty for disclosure shall not apply to information received under this subsection except it shall apply to disclosures by the receiving agency of possible fraud information except as legally prescribed.

Federal government assumes legal expenses of suits brought against PSROs in connection with their performance of any program duties or functions.



1 reasonable amount of the expenses incurred, as determined by  
 2 the Secretary, in connection with the defense of any suit,  
 3 action, or proceeding brought against such organization,  
 4 member, employee, or person related to the performance of  
 5 any duty or function of such organization, member, em-  
 6 ployee, or person (as described in section 1155).".

7 (k) Section 1168 of such Act is amended by adding at  
 8 the end thereof the following new sentence: "The Secretary  
 9 shall make payments to Professional Standards Review Orga-  
 10 nizations (whether designated on a conditional basis or other-  
 11 wise) from funds described in clause (c) of the first sentence  
 12 of this section (without any requirement for the contribution  
 13 of funds by any State or political subdivision thereof) for  
 14 expenses incurred in the performance of duties by such  
 15 Organizations".

16 (l) Part B of title XI of such Act is amended by adding  
 17 at the end thereof the following new section:

18 "ANNUAL REPORTS

19 "SEC. 1171. The Secretary shall submit to the Congress  
 20 on April 1, 1978, and on April 1 of each year thereafter, a  
 21 full and complete report on the administration, impact, and  
 22 cost of the program under this part during the preceding fiscal  
 23 year, including but not limited to data and information on—

24 "(1) the number, status (conditional or otherwise),

Reiterates legislative intent that the costs of PSRO operation are to be financed wholly by the Federal government with respect to Medicare and Medicaid review activities.

New Section in Title XI

"Annual Reports"

Requires annual report to Congress on the administration, impact and cost of the PSRO program during preceding year, including data on:

1 and service areas of and review methodologies employed  
 2 by all Professional Standards Review Organizations par-  
 3 ticipating in the program;

--the number, status,  
 service areas and  
 methodologies of par-  
 ticipating PSROs

4 "(2) the number of health care institutions and  
 5 practitioners whose services are subject to review by  
 6 Professional Standards Review Organizations, and the  
 7 number of beneficiaries and recipients who received  
 8 services subject to such review during such year;

--the number of insti-  
 tutions, practition-  
 ers, beneficiaries  
 and recipients sub-  
 ject to review

9 "(3) services determined, in accordance with the  
 10 provisions of this title, to have been (A) medically  
 11 unnecessary, (B) furnished in an inappropriate setting,  
 12 or (C) deficient in quality;

--services determined  
 to be unnecessary,  
 inappropriate or  
 deficient

13 "(4) the imposition of penalties and sanctions under  
 14 this title for violations of law and for failure to comply  
 15 with the obligations imposed by this part;

--penalties and sanc-  
 tions imposed

16 "(5) the total costs incurred under titles V, XI,  
 17 XVIII, and XIX of this Act in the implementation and  
 18 operation of all procedures required by such titles for  
 19 the review of services to determine their medical neces-  
 20 sity, appropriateness of use, and quality;

--total costs for PSRO  
 review under Titles  
 V, XI, XVIII and XIX

21 "(6) changes in utilization rates and patterns, and  
 22 changes in medical procedures and practices, attributa-  
 23 ble to the activities of Professional Standards Review  
 24 Organizations;

--changes in utiliza-  
 tion and medical  
 procedure patterns  
 attributable to PSROs

1       “(7) the results of program evaluation activities,  
2       including the operation of data collection systems;

—results of program  
evaluation

3       “(8) the extent to which Professional Standards  
4       Review Organizations are performing reviews of serv-  
5       ices for other private or governmental health insurance  
6       programs; and

—extent to which  
PSROs perform  
reviews for other  
health insurance  
programs

7       “(9) recommendations for legislative changes.”.

—recommendations for  
legislative changes

8       (m) Section 1861(w) (2) of such Act is amended by  
9       inserting “part B of this title or under” immediately after  
10      “entitled to have payment made for such services under”.

Extends passthrough  
PSRO administrative  
nondelegated review  
costs agreement to  
hospitals treating  
Medicare Part B  
patients.

11      (n) (1) Section 1152(b) (1) (A) (vi) of such Act is  
12      amended by striking out “subsection (c) (i)” and inserting  
13      in lieu thereof “subsection (c) (1)”.

Technical correction.

14      (2) Section 1155(a) (1) of such Act is amended by  
15      striking out “(subject to the provisions of subsection (g))”  
16      in the matter preceding subparagraph (A).

Conforms language to  
new subsection.

17      (3) Section 1160(b) (1) of such Act is amended by  
18      inserting “or” after “permanently” in the matter following  
19      clause (B).

Gives Secretary dis-  
cretion on length of  
time a provider might  
be excluded from pro-  
gram participation.

20      ISSUANCE OF SUBPENAS BY COMPTROLLER GENERAL

21      SEC. 6. Part A of title XI of the Social Security Act  
22      is amended by inserting after section 1125 (as added by  
23      section 3 (b) of this Act) the following new section:

New Section in Title XI

1 "ISSUANCE OF SUBPENAS BY COMPTROLLER GENERAL

2 "SEC. 1126. (a) For the purpose of any audit, investi-  
 3 gation, examination, analysis, review, evaluation, or other  
 4 function authorized by law with respect to any program  
 5 authorized under this Act, the Comptroller General of the  
 6 United States shall have power to sign and issue subpoenas  
 7 to any person requiring the production of any pertinent  
 8 books, records, documents, or other information. Subpenas  
 9 so issued by the Comptroller General shall be served by  
 10 anyone authorized by him (1) by delivering a copy thereof  
 11 to the person named therein, or (2) by registered mail or  
 12 by certified mail addressed to such person at his last dwelling  
 13 place or principal place of business. A verified return by the  
 14 person so serving the subpoena setting forth the manner of  
 15 service, or, in the case of service by registered mail or by  
 16 certified mail, the return post office receipt therefor signed  
 17 by the person so served, shall be proof of service.

18 "(b) In case of contumacy by, or refusal to obey a  
 19 subpoena issued pursuant to subsection (a) of this section and  
 20 duly served upon, any person, any district court of the United  
 21 States for the judicial district in which such person charged  
 22 with contumacy or refusal to obey is found or resides or trans-  
 23 acts business, upon application by the Comptroller General,  
 24 shall have jurisdiction to issue an order requiring such person  
 25 to produce the books, records, documents, or other informa-

"Issuance of Subpoenas  
 by Comptroller General"  
 Comptroller General may  
 issue subpoenas for per-  
 tinent information re-  
 garding any function  
 authorized by the Social  
 Security Act.

Details manner of  
 serving subpoena.

If person served refuses  
 subpoena, the local US  
 District Court can order  
 that person to produce  
 the information or be  
 found in contempt of  
 court.

tion sought by the subpoena; and any failure to obey such order of the court may be punished by the court as a contempt thereof. In proceedings brought under this subsection, the Comptroller General shall be represented by attorneys employed in the General Accounting Office or by counsel whom he may employ without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapters III and VI of chapter 53 of such title relating to classification and General Schedule pay rates."

Details appointment of  
Comptroller General's  
attorneys.

SUSPENSION OF PRACTITIONERS CONVICTED OF MEDICARE-  
OR MEDICAID-RELATED CRIMES

SEC. 7. (a) Section 1862 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(e) Whenever the Secretary determines that a physician or other individual practitioner has been convicted (on or after the date of the enactment of this subsection, or within such period prior to that date as the Secretary shall specify in regulations) of a criminal offense related to such physician's or practitioner's involvement in the program under this title or the program under title XIX, the Secretary shall suspend such physician or practitioner from participation in the program under this title for such period as he may deem appropriate; and no payment may be made

Secretary may suspend  
from program participation  
any practitioner  
convicted of an offense  
under Titles XVIII or  
XIX and no payment may  
be made for services  
rendered during the  
suspension.

1 under this title with respect to any item or service fur-  
 2 nished by such physician or practitioner during the period  
 3 of such suspension. The provisions of paragraphs (2) and  
 4 (3) of subsection (d) shall apply with respect to determina-  
 5 tions made by the Secretary under this subsection.”.

Provisions for public  
 notice and a hearing.

6 (b) Section 1902 (a) of such Act is amended—

Amends Title XIX to pro-  
 vide for suspension and  
 nonpayment of convicted  
 practitioners.

7 (1) by striking out “and” at the end of para-  
 8 graph (35);

9 (2) by striking out the period at the end of para-  
 10 graph (36) and inserting in lieu thereof “and”; and

11 (3) by inserting after paragraph (36) the follow-  
 12 ing new paragraph:

13 “(37) provide that whenever the State agency  
 14 determines that a physician or other individual prac-  
 15 titioner has been convicted (on or after the date of the  
 16 enactment of this paragraph, or within the period prior  
 17 to that date which is specified by the Secretary under  
 18 section 1862 (c) ) of a criminal offense related to such  
 19 physician's or practitioner's involvement in the program  
 20 under this title or the program under title XVIII, the  
 21 State agency shall suspend such physician or practitioner  
 22 from participation under the plan for such period as it  
 23 deems appropriate; and no payment may be made under  
 24 the plan with respect to any item or service furnished

1 by such physician or practitioner during the period of  
2 such suspension."

3 (c) The amendments made by this section shall apply  
4 with respect to determinations made on and after the date  
5 of the enactment of this Act.

The suspension amendment shall apply to determinations made on and after date of this bill's enactment.

6 DISCLOSURE BY PROVIDERS OF OWNERS CONVICTED OF  
7 CERTAIN OFFENSES

8 SEC. 8. (a) Part A of title XI of the Social Security  
9 Act is amended by inserting after section 1126 (as added  
10 by section 6 of this Act) the following new section:

New Section in Title XI

11 "DISCLOSURE BY PROVIDERS, INSTITUTIONS, ORGANIZA-  
12 TIONS, AND AGENCIES OF OWNERS WHO HAVE BEEN  
13 CONVICTED OF CERTAIN OFFENSES

"Disclosure by Providers, Institutions, Organizations, and Agencies of Owners Who Have Been Convicted of Certain Offenses"

14 "SEC. 1127. As a condition of participation in or certifi-  
15 cation or recertification under the programs established by  
16 titles XVIII, XIX, and XX, any hospital, nursing facility,  
17 or other provider, institution, organization, or agency shall  
18 be required to disclose to the Secretary or to the appropriate  
19 State agency the name of any person who—

Providers must disclose the name of any person with ownership or control of 5% or more who has been convicted of a criminal offense related to Titles XVIII XIX or XX programs.

20 "(1) has a direct or indirect ownership or control  
21 interest of 5 percent or more in such provider, institution,  
22 organization, or agency. and

23 "(2) has been convicted (on or after the date of  
24 the enactment of this section. or within such period

prior to that date as the Secretary shall specify in regulations) of a criminal offense related to the involvement of such person in any of such programs.

The Secretary or the appropriate State agency shall promptly notify the Inspector General in the Department of Health, Education, and Welfare of the receipt from any provider, institution, organization, or agency of any application or request for such participation, certification, or recertification which discloses the name of any such person, and shall notify the Inspector General of the action taken with respect to such application or request."

(b) (1) Section 1866 (a) of such Act is amended by adding at the end thereof the following new paragraph:

"(3) The Secretary may refuse to enter into an agreement under this section with a provider of services if any person having a direct or indirect ownership or control interest of 5 percent or more in such provider is a person described in section 1127."

(2) Section 1866 (b) (2) of such Act is amended by inserting before the period at the end thereof the following: ", or (4) that such provider (at the time the agreement was entered into) did not fully and accurately make any disclosure required of it by section 1127".

(c) Section 1903 of such Act is amended by adding at the end thereof the following new subsection:

The Inspector General of HEW shall be notified of providers such as those described above who apply for participation or certification and of the action taken on their request.

The Secretary may refuse Medicare program participation to a provider such as described above.

The Secretary may terminate agreement with a provider who does not disclose convicted owner or controller.



1       “(m) The State agency may refuse to enter into any  
 2 contract or agreement with a hospital, nursing home, or other  
 3 provider, institution, organization, or agency for purposes of  
 4 participation under the State plan, or otherwise to approve  
 5 a provider, institution, organization, or agency for such  
 6 purposes, if any person having a direct or indirect  
 7 ownership or control interest of 5 percent or more in such  
 8 provider, institution, organization, or agency is a person  
 9 described in section 1127 (whether or not such provider,  
 10 institution, organization, or agency has in effect an agree-  
 11 ment entered into with the Secretary pursuant to section  
 12 1866 or is subject to a suspension of payment order issued  
 13 under subsection (j) of this section); and, notwithstanding  
 14 any other provision of this section, the State agency may  
 15 terminate any such contract, agreement, or approval if it  
 16 determines that the provider did not fully and accurately  
 17 make any disclosure required of it by section 1127 at the  
 18 time such contract or agreement was entered into or such  
 19 approval was given.”.

20       (d) Section 2002 (a) of such Act is amended by adding  
 21 at the end thereof the following new paragraph:

22       “(15) Any State may refuse to enter into a contract or  
 23 other arrangement with a provider of services for purposes  
 24 of participation under the program established by this title,  
 25 or otherwise to approve a provider for such purposes, if any

The State may refuse participation to any provider with an owner or controller of 5% interest or more who has been convicted of a Medicaid program offense.

The State may terminate participation of provider who does not disclose such owner or controller.

Amends Title XX to allow participation refusal or termination of providers with such owners or controllers.

1 person having a direct or indirect ownership or control in-  
 2 terest of 5 percent or more in such provider is a person de-  
 3 scribed in section 1127, and may terminate any such con-  
 4 tract, arrangement, or approval if it determines that the  
 5 provider did not fully and accurately make any disclosure  
 6 required of it by section 1127 at the time the contract or  
 7 arrangement was entered into or the approval was given."

8 (e) The amendments made by this section shall apply  
 9 with respect to contracts, agreements, and arrangements en-  
 10 tered into and approvals given pursuant to applications or re-  
 11 quests made on and after the first day of the fourth month  
 12 beginning after the date of the enactment of this Act.

#### 13 FEDERAL ACCESS TO RECORDS

14 SEC. 9. (a) Section 1902 (a) (27) (B) of the Social  
 15 Security Act is amended by inserting "or the Secretary"  
 16 after "State agency" each place it appears.

Effective date 4 months  
after enactment.

Gives Federal access to  
provider records.

#### 17 CLAIMS PROCESSING AND INFORMATION RETRIEVAL

##### 18 SYSTEMS FOR MEDICAID PROGRAMS

19 SEC. 10. (a) Section 1903 (a) (3) (B) of the Social  
 20 Security Act is amended by inserting "or to each individual  
 21 in a sample group of individuals who are furnished such  
 22 services," immediately after "covered by the plan".

Allows random EOB sam-  
pling for certification  
of MMCs, beginning the  
calendar quarter after  
enactment.

23 (b) The amendment made by subsection (a) shall apply  
 24 with respect to calendar quarters beginning after the date  
of the enactment of this Act.

1 MEDICAID AS PAYOR OF LAST RESORT

2 SEC. 11. (a) Section 1902 (a) of the Social Security  
3 Act (as amended by section 7 (b) of this Act) is amended—

4 (1) by striking out "and" at the end of paragraph  
5 (36) ;

6 (2) by striking out the period at the end of para-  
7 graph (37) and inserting in lieu thereof " ; and " ; and

8 (3) by inserting immediately after paragraph (37)  
9 the following new paragraph:

10 " (38) provide that no expenditure may be made  
11 under the plan with respect to care or services provided  
12 to an individual under the plan to the extent that any  
13 agency, organization, or other person (other than a  
14 member of the individual's family) would have been  
15 obligated by a State law or contract to provide such  
16 care or services but for a provision of the State law or  
17 contract which limits or excludes such obligation be-  
18 cause the individual is eligible for or receives care or  
19 services under the plan. " .

20 (b) The amendments made by subsection (a) shall be-  
21 come effective January 1, 1978.

Medicaid is always  
payor of last resort.  
States may not limit  
third party liability  
in order to use Medi-  
caid funds first.

Effective Jan. 1, 1978.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
Social and Rehabilitation Service  
Washington, D.C. 20201

INFORMATION MEMORANDUM  
SRS-IM-77- 11 (MSA)  
February 14, 1977

TO: STATE AGENCIES ADMINISTERING MEDICAL ASSISTANCE PROGRAMS

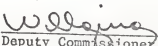
SUBJECT: Proposed legislative changes in Title XIX, Social Security Act: HR 3 and S.143

ATTACHMENT: An annotated copy and summary of HR 3, a bill recently introduced in the 95th Congress, designed to combat fraud and abuse in the Medicaid program. HR 3 was jointly introduced by Congressmen Dan Rostenkowski and Paul Rogers, Chairmen of the Health Subcommittees of the Ways and Means and the Interstate and Foreign Commerce Committees, respectively. While there are some similarities to the bill known as the "Talmadge Fraud and Abuse Bill" (S.3801) of the last session of Congress, the bill has been substantially rewritten.

Senator Talmadge, Chairman of the Health Subcommittee of the Senate Finance Committee, has introduced S.143, a bill similar to HR 3. The only difference between the two bills is that S.143 does not contain Section 5 of HR 3, "Amendments Related to Professional Standards Review Organizations." Senator Talmadge did not include the changes in the PSRO program because, he said, even though "many of those changes appear necessary...it is my belief that they can not truly be characterized as anti-fraud and anti-abuse bills and, for that reason, they are not included in the Senate version." (Congressional Record, January 11, 1977 p. S.368)

The House is planning to hold hearings on March 3rd and 7th on HR 3; Senate Hearings will probably be later in the spring. Since the Department will be asked to testify, we would appreciate having your comments on the legislation. In addition, on March 8th, the day after the hearings, there will be a Legislative Session at the Annual Conference of State Medicaid Program Directors. Professional staff members from the House Interstate and Foreign Commerce Committee, Health Subcommittee, and the Health Subcommittee of the Senate Finance Committee will be present to discuss the bill and any other legislative concerns you may have.

INQUIRIES TO: Division of Program Planning and Evaluation  
Attn: Suzanne Hassett (202-245-0123)  
Medical Services Administration  
Social and Rehabilitation Service  
Room 4062  
330 "C" Street S.W.  
Washington, D.C. 20201

  
Deputy Commissioner  
Medical Services Administration

Summary of HR 3  
Medicare-Medicaid Anti-Fraud  
and Abuse Amendments

- Section 2 - Eliminates the loophole in the current law that allows providers to assign factoring agents power of attorney, thus circumventing the prohibition against factoring in existing law.
- Section 3 - Requires providers (other than individual physicians) and suppliers to disclose upon request from the Secretary of HEW or the Comptroller General (1) the identity of individuals, officers and directors of corporations and partners having an interest of 5% or more in the entity, (2) relations between persons mentioned above and any significant business transactions with the entity (3) cost and charges for items and services provided under Titles V, XVIII, or XIX and (4) access to books and records. Penalties for non-compliance are also provided.

This section would also define "shared health facilities" (Medicaid mills) so that PSRO's can increase their jurisdiction over these types of facilities.

- Section 4 - Criminal penalties for providers who defraud the Medicaid and Medicare programs are increased to felonies. Recipients who defraud the program will still be guilty of a misdemeanor, but States can suspend their eligibility for the program for up to one year.
- Section 5 - Modifies existing Professional Standards Review Organizations provisions. The bill would:
- a) require the Secretary of HEW to give priority to a PSRO request to review the services of a shared health facility.
  - b) provide that a PSRO furnish appropriate data to State and Federal agencies investigating fraud and abuse and to health planning agencies.
  - c) give PSRO's primary review authority and provides that its review with respect to the necessity and appropriateness of care is conclusive - subject to hearings.

- d) clarify existing law that PSRO activities are 100% federally financed and that no State Medicaid contribution is required.
- e) clarify legislative authority for the federal government to assume the costs of defense of PSRO's against suit.
- f) authorize the Secretary of HEW to extend a conditional PSRO's trial period for 24 months.
- g) authorize the Secretary of HEW to designate a PSRO as a qualified organization following its trial period where he finds it is performing reviews of hospital services satisfactorily and has a plan for progressively assuming all required PSRO functions.

Section 6 - Would give the General Accounting Office subpoena power to assist it in its monitoring, review and oversight activities related to the Social Security Act programs.

Section 7 - Would require the Secretary of HEW to suspend individual practitioners from the medicare program who are convicted of a criminal offense related to their involvement in either medicare or medicaid. Similarly, medicaid would be modified to require that states suspend from medicaid, any individual practitioner who is convicted of a criminal offense related to his involvement in either medicare or medicaid.

Section 8 - Would require prospective providers of services or those seeking recertification under either medicare, medicaid, or title XX social services to disclose in the application for program participation the name of any person who has a five percent or more ownership or controlling interest in the applicant provider and who has been convicted of a criminal offense relating to a prior involvement with a program authorized under either title XVIII, XIX, or XX of the Social Security Act. The Secretary of HEW or appropriate state agency is not required to enter into any agreement or contract with a provider who, although otherwise qualified, has an owner who meets such criteria. In the case of an application disclosing an ownership or control interest outlined above, the Secretary or appropriate state agency shall notify the Inspector General of both the receipt and disposition of such application.

Section 9 - Would allow federal access to the books of providers of services under medicaid in the same manner that such access is presently provided to state agencies.

Section 10 - Would allow 75 percent federal matching towards the cost of operating an approved medicaid claims processing and information system if the system provides explanation of benefits information to a sample group of individuals. This modifies present law which only allows the higher matching if the explanation is furnished to all recipients. The strict matching requirements of existing law have limited the growth of this type of claims processing and information system.

Section 11 - Would make clear that medicaid is the payor of last resort where other payors might have an obligation to cover the cost of services rendered to a medicaid claimant.

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